United Nations A/HRC/25/59/Add.2

General Assembly

Distr.: General
14 April 2014

Original: English

Human Rights Council
Twenty-fifth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson

Addendum

Mission to Chile* **

Summary

At the invitation of the Government, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism conducted a visit to Chile from 17 to 30 July 2013. He wishes to thank the Government for the invitation and the excellent cooperation extended to him.

The main focus of the visit has been the use of anti-terrorism legislation in connection with protests by Mapuche activists aimed at reclaiming their ancestral lands and asserting their right to collective recognition as an indigenous peoples and respect for their culture and traditions.

* Late submission.

** The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is circulated in the language of submission and in Spanish only.

GE.14-13489

1413489

Please recycle

The Special Rapporteur examines the general political background of the conflict and analyses the national legislative framework. He discusses the importance of a strict definition of the concept of terrorism so that it is not overly expansive in scope and notes with concern a number of inconsistencies between the Counter-Terrorism Act and the guarantee of respect for the principle of legality and the right to due process. He also expresses serious concern at the excessive use of force by the police (Carabineros) and the investigative police in the context of searches or raids in Mapuche communities and at the lack of accountability for such violations.

The Special Rapporteur concludes that the situation in the Araucanía and Biobío regions is extremely volatile, with the frequency and gravity of the violent confrontations intensifying over the past three years. He urges the Government of Chile to give the matter the priority it deserves and makes a number of key recommendations in the framework of a comprehensive and integrated national strategy for addressing the Mapuche question.

Annex

[English and Spanish only]

Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, on his mission to Chile

Contents

		Paragraphs	*Page*
I.	Introduction	1–8	4
II.	Context of the visit	9–46	5
	A. General political background	9–22	5
	B. Challenges identified	23–28	7
	C. Legislative framework	29–46	9
III.	Main findings	47–82	12
	A. Application of the counter-terrorism legislation	47–54	12
	B. Procedural shortcomings	55–68	13
	C. Excessive use of force by the police	69–79	16
	D. Conditions of detention	80–82	19
IV.	Conclusions and recommendations	83–97	19
	A. Conclusions	83–87	19
	B. Recommendations	88–97	20

I. Introduction

1. Pursuant to Human Rights Council resolutions 15/15, 19/19 and 22/8, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism conducted an official visit to Chile from 17 to 30 July 2013 at the invitation of the Government.

2. The purpose of the visit was to gather information and engage in a dialogue on the content and application of the Counter-Terrorism Act (No. 18,314), and compliance with the rule of law and the protection of human rights.

3. During the course of his visit, the Special Rapporteur had productive meetings with the Minister of Justice; the Vice-Minister of Interior and Public Security and a representative of the Ministry's human rights programme; the Director General for Multilateral Affairs and the Director for Human Rights of the Ministry of Foreign Affairs; as well as a regional representative of the Ministry of Social Development. He also met with the National Prosecutor (Attorney General) and the Chief Prosecutors responsible for regions VIII and IX of the country. He further met with the National Chief of the Public Defender's Office and the Chiefs responsible for the regions of Araucanía and Biobío; with representatives of the Legal Assistance Corporation and the National Indigenous Development Corporation (CONADI); and with the Director of the human rights unit of the Prison Service. Members of the judiciary with whom the Special Rapporteur held meetings included the President of the Supreme Court and the magistrate responsible for coordination of human rights matters, and the President of the Constitutional Court.

4. The Special Rapporteur held meetings with various representatives of the Carabineros, including the Director General, the Chief of the Department for Human Rights, the Chief Inspector General responsible for regions VIII, IX and XIV, and the Chief Officers of regions VIII and IX. He further met with the National Chief of human rights crimes of the investigative police and with the Regional Chief of the investigative police of Araucanía. During a visit to the National Parliament, the Special Rapporteur met with the Presidents of the Committees on Human Rights, Nationality and Citizenship and on Constitution, Law, Justice and Regulation of the Senate; with the President of the Committee on Human Rights, Nationality and Citizenship of the Chamber of Deputies; and with individual deputies. In addition, he met with the Director and representatives of the National Human Rights Institution.

5. During his visit, the Special Rapporteur also met with lawyers, academics, representatives of the Church, including the Archbishop of Temuco, associations of victims of rural violence, private-sector representatives, and civil society organizations, including NGOs. Furthermore, he met with a significant number of representatives of different Lof (Mapuche communities or territorial units).

6. The Special Rapporteur conducted visits to three detention facilities, notably the Temuco City prison, the Angol prison and the El Manzano prison in Concepción which all house detainees for offences connected with the Mapuche protests, both those convicted and those awaiting trial. He met privately with a number of Mapuche detainees.

7. Furthermore, the Special Rapporteur consulted with relevant United Nations agencies, including the United Nations Development Programme, the United Nations Children's Fund (UNICEF) and the Economic Commission for Latin America and the Caribbean. He would like to thank the United Nations system, in particular the Office of the United Nations High Commissioner for Human Rights, Regional Office for South America, in Santiago for providing valuable support throughout his visit.

8. The Special Rapporteur thanks the Government of Chile for the invitation and the constructive and cooperative way in which all Government representatives approached the visit.

II. Context of the visit

A. General political background

9. The focus of the Special Rapporteur's country visit has been upon the use of counter-terrorism legislation in connection with protests by Mapuche activists aimed at reclaiming their ancestral lands and asserting their right to collective recognition as an indigenous people and respect for their culture and traditions. In 2003, the then Special Rapporteur on the rights of indigenous peoples stated that charges for offences in other contexts ("terrorist threat", "criminal association") should not be applied to acts related to the social struggle for land and legitimate indigenous complaints (E/CN.4/2004/80/Add.3, para. 70).

10. Mapuche land protests have typically been characterized by land occupations, as well as arson and other forms of physical attack directed at agricultural, logging and industrial property associated with the commercial settlement of Mapuche territory. In recent years, however, the scale, frequency and intensity of those incidents has increased, partly owing to the slow rate of progress in the State's scheme for repatriating Mapuche territory.

11. The present situation of indigenous peoples in Chile is the outcome of a long history of marginalization, discrimination and exclusion, mostly linked to various oppressive forms of exploitation and plundering of their land and resources that date back to the sixteenth century and continue to this day (E/CN.4/2004/80/Add.3, para. 8). The current problems facing indigenous peoples cannot be understood without reference to the history of their relations with Chilean society (ibid.). The Special Rapporteur went into greater detail on that issue in his end of visit statement.[1]

12. The largest indigenous group is the Mapuche people, which is concentrated in the south in the Araucanía and Biobío regions and is subdivided into various indigenous territorial groups. A sizeable contingent of Mapuche people also lives in relative poverty in the metropolitan area of Santiago.

13. Through his meetings with the representatives of Mapuche communities, the Special Rapporteur learned that the Mapuche religion and culture is premised upon their relationship with their natural environment and the principle of respect for all living things. The occupation and commercial exploitation of their ancestral land, with the adverse environmental consequences that go with intensive commercial land usage, is thus viewed by sections of the Mapuche as an attack on their essential values and even on their very right to exist.

14. Since the first occupation of Mapuche territory at the end of the nineteenth century, the State of Chile has progressively encroached upon Mapuche ancestral lands. That encroachment continued largely unabated through the sale of ancestral lands to commercial interests, often at less than their full value. The point has now been reached at which the

[1] Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13598&LangID=E.

surviving Mapuche rural communities have been driven into pockets of relatively unproductive land in often isolated areas of the Araucania and Biobio regions. Their communities are typically impoverished and surrounded by commercial farming, logging and other economic activities, which they regard as exploiting the natural resources of their land. It is a source of great resentment among the Mapuche that those activities are performed on their ancestral territory, within sight of the communities that have been dispossessed. The Special Rapporteur has visited some of these communities and seen for himself the impoverished conditions of life in which many of the rural Mapuche are forced to live.

15. The historical debt owed by the State of Chile to the Mapuche people is described in the report of the Historical Truth and New Deal Commission issued in October 2008. However, while that report recommended the expropriation of Mapuche land from the settler community (with compensation) and its repatriation to the Mapuche, the State has so far rejected that proposal. Instead, it has established a regional programme aimed at repurchasing relatively small tracts of land from the settler communities, together with limited regional grants intended to enable Mapuche communities to make effective use of the land. Until 2010, the repatriation progress, which has been administered by CONADI, was slow, arbitrary and viewed as largely ineffective by the Mapuche. This was due in part to poor administration by CONADI, combined with land speculation by members of the settler community, which had the effect of pushing up the purchase price per hectare, and thereby delaying the process of repatriation.

16. Over the past two years, CONADI has instituted a number of measures aimed at speeding up the land repatriation process and has succeeded in stabilizing the market value of the land. According to information received, the total budget for CONADI has increased from US$ 124 million in 2010 to US$ 181 million in 2013. Regarding production development, in 2011, 26,300 families benefited from the Indigenous Territorial Development Programme of the National Institute for Agricultural Development. In previous years, that programme had only covered 3,000 families (CERD/C/CHL/19-21, paras. 200–202). However, during a meeting with the Special Rapporteur, representatives of CONADI acknowledged that the central budget available for that purpose was grossly insufficient, and that with the current budget it would take several decades before even the earmarked lands could be returned. That assessment has subsequently been contested by the Government of Chile, which has estimated the duration of process of return of earmarked lands at approximately six years.

17. Another issue of particular concern to the Special Rapporteur is the lack of constitutional recognition of indigenous peoples, despite the international obligations of Chile. In that respect, he notes recent reform initiatives, but observes that organizations representing indigenous peoples have criticized those initiatives for being designed without their prior consultation or participation.

18. The Special Rapporteur has taken due note of the various initiatives taken by the Government of Chile to enhance the participation and consultation of indigenous peoples (see CCPR/C/CHL/6, paras. 144–147). These include the establishment by CONADI of a unit for work on International Labour Organization (ILO) Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries and the launch on 8 March 2011 of the Consultation on Indigenous Institutions with the objective of addressing three major subject areas.[2] The consultation process was subsequently suspended following

[2] These subject areas include: (a) the establishment of a consultation and participation procedure, including the rules on participation in the Environmental Impact Assessment System; (b) the draft

requests to that effect by representatives of indigenous community leaders and a number of politicians. The Special Rapporteur understands that the decision to suspend the process was primarily based on the need to initially focus on the setting up of mechanisms and procedures for indigenous consultation and he is encouraged by the recent adoption of new regulations for such consultation (see A/HRC/WG.6/5/CHL/1, paras. 48–60).

19. Notwithstanding those developments, the Special Rapporteur concurs with the concerns expressed by the Committee on the Elimination of Racial Discrimination at the slow pace of progress towards the establishment of an effective mechanism for consultation with indigenous peoples and for the promotion of their participation in accordance with international instruments (CERD/C/CHL/CO/19-21, para. 12).

20. The Special Rapporteur also wishes to draw attention to the absence of political consensus on whether Mapuche land protests can or should be stigmatized as terrorism. The Special Rapporteur met with elected political representatives from the Government and opposition with a close interest in that issue. It is clear that political opinion in Chile is deeply divided on the use of the anti-terrorism legislation against the Mapuche, and that such polarization has impeded progress towards a consistent and principled application of the law. One point of view is that the anti-terrorism legislation should be strengthened and more frequently applied and legislation has been proposed to that effect.

21. The opposing view is that anti-terrorism legislation has no role to play at all in connection with the Mapuche question; that Mapuche protests have not taken the form of recognizable terrorism; that the use of the anti-terrorism legislation in connection with Mapuche land protests is counterproductive to the promotion of a peaceful resolution to the Mapuche question; and that, at its worst, it amounts to a form of labelling aimed at delegitimizing the underlying cause of the Mapuche people. That view was endorsed, to varying degrees, by elected politicians from the Government and the opposition who are most closely associated with constituencies in the Araucanía and Biobío regions, and are therefore closer to the problem.

22. The only point on which all were agreed is that the current application of the anti-terrorism law is unsatisfactory and inconsistent. The Special Rapporteur did not encounter any interlocutor (apart from the public prosecutors) who expressed satisfaction with the present state of affairs.

B. Challenges identified

23. Chile is a signatory to the United Nations Global Counter-Terrorism Strategy unanimously adopted by Member States on 8 September 2006 in General Assembly resolution 60/288, and most recently reaffirmed by the General Assembly in June 2012 in its resolution 66/282. The Strategy is a global instrument to enhance national, regional and international efforts to counter terrorism where all Member States have agreed to a common strategic approach to fight terrorism. The Strategy is not limited to sending the clear message that terrorism is unacceptable in all its forms and manifestation. It is also aimed at taking practical steps individually and collectively to prevent and combat it.[3]

---

constitutional amendment recognizing indigenous peoples; and (c) the establishment of an indigenous development agency and a council of indigenous peoples.

[3] Information on the Strategy is available from www.un.org/en/sc/ctc/action.html.

24. The first pillar of the Strategy requires all States to devote the necessary efforts to address the conditions conducive to the spread of terrorism and violent extremism. The core philosophy underlying that pillar is that the spread of violent extremism cannot be effectively countered by law enforcement measures alone. Indeed, the collective experience of the Member States is that excessive and discriminatory law enforcement aggravates the threat of violent extremism and is counterproductive. In accordance with the first pillar, States must address not only the manifestations of social and political violence, but also its root causes. All Member States of the United Nations, including Chile, have reached a consensus to the effect that the conditions conducive to the spread of politically motivated violence and extremism include long-running regional disputes, such as land disputes, poor governance, violations of human rights, legal discrimination and political, economic and educational exclusion.

25. The Special Rapporteur notes that all of these factors are present in the conditions underlying the Mapuche land protests. Historical grievances, once recognized, must be effectively and promptly addressed. Where State policy raises expectations that then remain unfulfilled due to lack of resources and poor administration by public officials, there is an ever-present risk that the protests will escalate to the level of widespread public disorder. Political and economic exclusion of the kind still experienced by the Mapuche people is a recognized cause of violent extremism. The responsibility for addressing those issues rests squarely with the State. Since the restoration of democracy in Chile, no Government of either political hue has given the issue the priority it deserves. The Special Rapporteur underlines that the State of Chile has a duty to promote a peaceful and just solution to the Mapuche questions. This is a duty which the Government owes not just to the Mapuche, but also to the settler communities in the rural areas of Araucanía and Biobío, to the law enforcement officials in those regions upon whom the State relies to keep the peace and to the wider community in those regions who are entitled to expect the State to discharge its public administration obligations effectively and without discrimination, so as to maintain the principles underlying representative democracy.

26. As already noted, the scale, frequency and intensity of the Mapuche protests have increased in recent years. There have been increasingly frequent attacks on members of the Carabineros who have in the past been perceived by sections of the Mapuche community to be partisan, and to have operated as an instrument of State repression. At least one member of the Carabineros has been killed and many more have been the victims of potentially fatal attacks. Particularly disturbing was the death, in January 2013, of the couple Werner Luchsinger and Vivian Mackay during an arson attack on their farm. The attack followed a series of previous non-fatal attacks on property belonging to members of their extended family, which has been engaged in large-scale commercial farming in the region for many years.

27. The Special Rapporteur notes that the settler community is also deeply dissatisfied with the political strategy that has so far been pursued by the State of Chile in its efforts to resolve the Mapuche question. During meetings with organizations representing victims of rural violence, small landowners complained forcefully that insufficient compensation had been set aside to enable them to resettle elsewhere in Chile under conditions comparable to those under which they had previously lived and worked. Others, including representatives of commercial interests in the region, complained that the lack of political will within central Government to seek and deliver a lasting solution to the problem left their communities and their enterprises unprotected. During the entirety of the Special Rapporteur's visit, none of the stakeholders in the Araucanía and Biobío regions expressed satisfaction with the efforts made by central Government to address the issue.

28. The Special Rapporteur assesses the situation in Araucanía and the surrounding areas to be volatile, and liable to spread into a full-blown regional conflict unless urgent

action is taken to address not only the manifestations of the violence, but also its root causes. All interlocutors familiar with the situation agreed that, while those perpetrating acts of violence are currently few in number, the degree of tacit sympathy for their actions is potentially much more widespread among Mapuche communities. In the opinion of the Special Rapporteur, the risk of escalation is very real and it is imperative that the State of Chile take urgent action to address the situation before it veers out of control. At the same time, the Special Rapporteur reiterates that indigenous persons and peoples should always ensure that their statements and demonstrations take a peaceful form and respect the human rights of others.

C. Legislative framework

1. Human rights and other international obligations

29. Chile is a State party to the core human rights treaties and it cooperates regularly with the international human rights treaty bodies, including through the timely submission of reports, endeavouring to put their recommendations into practice, and bringing domestic legislation into line with international instruments. It has also acted on the recommendations and judgements of the inter-American human rights bodies (see A/HRC/WG.6/5/CHL/1, paras. 15–17).

30. The political will of the Government to effectively counter terrorism is visible in the number of international anti-terrorism instruments to which Chile is a State party. To date, the Government is a State party to 14 of the 16 international anti-terrorism instruments.

31. In 2008, Chile ratified ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, so that in compliance with international standards, the Government has to open an indigenous participation and consultation process (see A/HRC/WG.6/5/CHL/1, para. 58).

2. National legislative framework

32. In 1993, Chile adopted the Indigenous Peoples Act (Act No. 19,253), which sets out the rights of the indigenous peoples, establishes their own public institutional framework and promotes the implementation of public policies on the restitution and protection of land and water, the development of production and the affirmation of their cultural and educational values. The Act established CONADI, which is to put the provisions of the Act into practice and is a decentralized public body with its own resources responsible for promoting, coordinating and implementing action by the State to encourage the full development of indigenous individuals and communities (A/HRC/WG.6/5/CHL/1, para. 48 and 49). In 2012, Chile adopted Act No. 20,609, which establishes measures to combat discrimination (the Anti-Discrimination Act).

33. The general law governing the fight against terrorism in Chile, Act No. 18.314[4] (commonly known as the "Counter-Terrorism Act"), was enacted on 17 May 1984, by the military dictatorship of General Augusto Pinochet, with the clear purpose of severely penalizing any rebellion against the regime.

34. The law has been significantly amended in 1991, 2002, 2003, 2010 and 2011. The 2002 reform attributed investigative and persecutory competencies to the Public

[4] Available from www.leychile.cl/Navegar?idNorma=29731 (Spanish only).

Prosecution Service (Ministerio Público), following the criminal justice reform undertaken by Chile in 2000.

35. The 2010 revision of the law was the result of a hunger strike undertaken in July of that year by 34 Mapuche detainees being prosecuted for offences related to social protests under the Counter-Terrorism Act in order to draw public attention to the lack of guarantees of due process in their trials. Finally, a criminal court condemned four of the Mapuche accused in that case. Although the Counter-Terrorism Act was not invoked in their sentences, the trial included components of the aforementioned law, such as the use of anonymous witnesses' testimonies.

36. In October 2010, an agreement was reached between the Government and the Mapuche whereby the Government committed to "abandoning all lawsuits for terrorist crimes and reconsidering such actions under the rules of common criminal law".[5] Nonetheless, the Government and the Public Prosecution Service has continued to implement the law in such cases by invoking it or using the procedural advantages it grants at the investigative stage.[6]

37. As part of the agreement, the Government also committed to continue promoting, through the National Congress, reforms to the Military Justice Code so that civilians are tried before the ordinary courts, thus avoiding a double court case, and bringing it into line with the principle of due process. To that end, Congress received a legislative initiative from the Government in October 2013 and passed a law that partially modified the Military Criminal Court's jurisdiction by excluding civilians and children (Act No. 20,477).[7]

38. Alongside the Government's commitment to dropping the cases relating to terrorist crimes referred to earlier, Act No. 20,467[8] was published in the Official Bulletin on 8 October 2010 and introduced amendments to the Counter-Terrorism Act (No. 18,314). These included repealing a statutory presumption of terrorist intent applicable in certain situations, affirming the limited right of the defence to cross-examine anonymous witnesses and removing accused juveniles from the scope of the legislation.[9] It also appears to have resulted in the provisional release of a significant number of accused pending trial.

39. Confronted with the erroneous interpretation of that second reform by the justice system (which continued to prosecute minors through the Counter-Terrorism Act[10]), the law, however, was amended again in June 2011 through Act No. 20,519, which added a second and third paragraph to article 1 clearly forbidding the application of the law to minors.

---

[5] Text of the agreement, concluded in Concepción on 1 October 2010.

[6] Other lawsuits involving members of the Mapuche community, in which the Public Prosecutor's Office has continued to invoke the counter-terrorism legislation include: Lawsuit RUC 0900969218-2 (Tollbooth, Victoria); Lawsuit RUC 0900697670-8 (Tur-Bus or Large By Pass, Temuco); Lawsuit RUC 0910021481-1 (Brasil Estate).

[7] According to a transitory system included in this law, the Mapuche cases being heard before the military courts had to be transferred to the ordinary justice system within a period of no more than 60 days following the law's entry into force.

[8] See Act No. 20,467, available from www.leychile.cl/Navegar?idNorma=1017644.

[9] The Government highlighted the main amendments to the Counter-Terrorism Law in its recent periodic report to the Human Rights Committee (CCPR/C/CHL/6, paras. 87 and 88).

[10] The Public Prosecutor's Office continued to apply the Counter-Terrorism Law to minors in at least four cases (Cristián Alexis Ayupan Morales, José Antonio Ñirripil Pérez, Luis Humberto Marileo Cariqueo and Patricio Queipul Millano).

3. Definition of a terrorist crime

40. The Special Rapporteur concurs with his predecessor that domestic counter-terrorism provisions should, in the absence of a comprehensive international definition of the crime of terrorism, adhere to the three-step cumulative characterization according to which an act, in order to be classified as terrorist, must have been:

(a) Committed against members of the general population, or segments of it, with the intention of causing death or serious bodily injury, or the taking of hostages;

(b) Committed for the purpose of provoking a state of terror, intimidating a population, or compelling a Government or international organization to do or abstain from doing any act;

(c) Corresponding to all elements of a serious crime as defined by the law.[11]

41. That approach is also reflected in Security Council resolution 1566 (2004), which provides further guidance for what crimes can be defined as terrorist ones under item (c), by referring to existing international conventions and protocols relating to terrorism.

42. In addition, any law proscribing terrorism must adhere to the principle of legality enshrined in article 15 of the International Covenant on Civil and Political Rights, be applicable to counter-terrorism alone and comply with the principle of non-discrimination (A/HRC/10/3/Add.2, para. 6; see also A/HRC/16/51, paras. 26–28).

43. The Special Rapporteur is of the view that the definition of terrorism under Chilean legislation is very broad and depends upon proving the commission of a substantive criminal offence (such as arson) coupled with the necessary intent to instil fear in the population and thereby to influence government policy. In that regard, the Special Rapporteur notes that the Inter-American Commission on Human Rights, upon specific analysis of the amendment in relation to terrorist behaviour, concluded that "legislation of the likes of Law 18,314 contradict the principle of legality".[12] The Commission further concluded that "although the Chilean Congress has passed a new law, the legal amendments to date have not brought about a substantial change in the classification of what constitutes terrorist behaviour, which would ensure its compatibility with the principle of legality enshrined in… the American Convention".[13]

44. The Special Rapporteur notes with concern that the 2010 amendment does not define the protected legal right and maintains a reference to rights and behaviours already foreseen and protected by ordinary criminal law, including the crime of arson in an uninhabited place. He concurs with the statement of the Commission that: "by allowing interpretation of terrorism to include behaviour that exclusively violates property, ambiguities and confusion arise as to what the State deems a terrorist offence to be".[14]

45. It should be noted that at the time of the writing of the present report, the case of *Norín Catrimán et Pichún Paillalao* v. *Chile* is being considered by the Inter-American Court of Human Rights.[15] This case, among other controversial and alleged violations of

---

[11] A/HRC/16/51 identifies ten areas of best practices in countering terrorism and practice 7 contains the model definition of terrorism.

[12] IAHCR, In-depth Report 176/10 on cases 12,576, 12,611 and 12,612, para. 152.

[13] Ibid., para. 154.

[14] Ibid, para. 141.

[15] The document submitted in the case against Chile was presented on 7 August 2011 by the Inter-American Commission on Human Rights to the Inter-American Court of Human Rights. The case was heard by the Court by public audience in its ninety-ninth period of sessions (May 2013).

rights put forward by the Inter-American Commission, concerns equality and non-discrimination in the application of the counter-terrorism legislation.

46. While this form of definition is not unique to Chile, the Special Rapporteur is concerned that it leaves a broad discretion to the prosecutor which can lead to unforeseeable and arbitrary application, and is therefore open to potential abuse. The Special Rapporteur took it upon himself to consider how this legislation had in fact been applied.

III. Main findings

A. Application of the counter-terrorism legislation

47. Prior to his visit, the Special Rapporteur was informed of the commitment made in previous years by the Government and reported to human rights bodies not to apply the Counter-Terrorism Act for the prosecution of individuals in cases involving Mapuche social movements.[16] That was noted by the Special Rapporteur on the rights of indigenous peoples, who, in 2009, called on the competent authorities to meet this commitment (A/HRC/12/34/Add.6, para. 61).

48. In the course of his visit, the Special Rapporteur found that the anti-terrorism legislation had been invoked by the local public prosecutors and by the Ministry of the Interior and Public Security in a total of 19 emblematic cases, involving 108 individuals. The statistics demonstrate that Mapuche protests account for the vast majority of prosecutions under the anti-terrorism legislation. The remainder relate to the placement of bombs or explosives in the metropolitan area of Santiago in the framework of anarchist or anti-system movements. In addition, official statistics from the Office of the Public Prosecutor indicate that, in 2010 and 2011, 48 people have been charged under the Counter-Terrorism Act, 32 of whom are related to or belong to indigenous peoples' communities.[17]

49. The Special Rapporteur also reviewed regional statistics and found that there have been a total of 843 cases in Region IX (Araucanía) in relation to the Mapuche protests ("Conflicto Mapuche") for the period of 2008–2012, with the majority of cases reported in the districts of Collipulli (548) and Temuco (104). Of the 300 cases reported in 2012, 218 were reported in the districts of Collipulli, 32 in Angol and 20 in Temuco. According to the information received, only five of the 843 cases have been formalized as terrorist offences. With regard to Region VIII (Biobío), there have been a total number of 113 "Mapuche-related" cases for the period from 2004 to early 2013, of which two were formalized as terrorist offences. Statistics indicate a total number of seven cases in Regions X (Los Lagos) and XVI (Los Ríos) in relation to the Mapuche protests, none of which have been formalized as terrorist offences.

50. The Special Rapporteur notes, however, that these statistics do not include cases where the anti-terrorism legislation was applied at the earlier investigation stages with the additional procedural advantages described below and where the formal charges were later changed to offences under the ordinary criminal legislation.

---

[16] The Special Rapporteur notes that the newly elected President has publicly expressed her strong commitment to the non-application of the law to indigenous peoples for social claims. See *Programma de gioberno 2014–2018: Michelle Bachelet*, p. 174. Available from http://michellebachelet.cl/programa/.

[17] Public Prosecutor, Notification No. 505/2011 of 25 August 2011.

51. The Special Rapporteur also notes that where a State retains a broad and subjective legal definition of terrorism, it is an essential minimum safeguard against abuse that there should be objective criteria for the exercise of prosecutorial discretion, and a consensus as to what forms of protests can properly be characterized as acts of terrorism. The Special Rapporteur considers that in Chile today there are no such objective criteria, and there is no such consensus.

52. During a series of meetings with representatives of the offices of the national and regional public prosecutors and the Ministry of the Interior, the Special Rapporteur has sought to identify any objective criteria adopted for determining which protests satisfy the legal definition of terrorism and which do not. The various justifications put forward have been subjective and lacking in legal rigour. A comparison of the cases that have been charged as terrorism with those which have not bears that out. It is impossible to distinguish any clear and consistent dividing line between cases that have been treated as common criminal offences (such as arson, attempted murder and firearms offences) from those in which the counter-terrorism legislation has been invoked, in order to aggravate the sentence and provide additional procedural advantages to the prosecutor.

53. In addition to the absence of objective legal criteria, there is an absence of political consensus as to the question whether Mapuche land protests can or should be stigmatized as terrorism, as described in paragraphs 20–22 above. In such a politically polarized and legally unsatisfactory situation, the Special Rapporteur is duty-bound to express his conclusions and recommendations on the question.

54. On the one hand, there can be no doubt that the anti-terrorism law has been used disproportionately against persons accused of crimes in connection with the Mapuche land protests. Central Government and public prosecutors stressed to the Special Rapporteur that this did not amount to stigmatizing the Mapuche people, or to characterizing Mapuche political protests as a whole as amounting to a campaign of terrorism, but rather involved the application of legal criteria to the facts, on a case-by-case basis. However, in the absence of any coherent and objective criteria for the invocation of the law, and in the face of the most obvious inconsistencies in application, it is necessary to justify the continuing invocation of the anti-terrorism law in such a volatile political situation. More particularly, given the potential that those charges have for raising the level of tension in connection with the Mapuche question and for antagonizing the most active sections of the Mapuche community, it is necessary to consider whether the invocation of the ordinary criminal law provides sufficient tools to maintain law and order, and to protect and vindicate the rights of the victims of rural violence.

B. Procedural shortcomings

55. In cases where the Counter-Terrorism Law has been invoked, it is invariably used as an adjunct to a substantive criminal offence which can be prosecuted under ordinary criminal law. If that law is invoked, the accused is subjected to a number of significant procedural and substantive disadvantages. They include the use of "anonymous" or unidentified prosecution witnesses[18] and special investigative powers, comprising telephone tapping and interception of correspondence, such as e-mails and other communications.[19]

[18] Act No. 18,314, arts. 15, 16, 17 and 18 (which establish the witness as "faceless" or as a witness with a protected identity).

[19] Ibid, art. 14.

56. With regard to detention, the Special Rapporteur learned that, under ordinary criminal law, an individual may be detained for a period of 24 hours in police custody prior to his or her first appearance in court (which may be extended for up to three days). However, in terrorist cases, that period may be (and routinely is) extended by a judge for up to 10 days.[20] The Special Rapporteur found that the procedure for securing such detentions is not adversarial and the defence rarely has an opportunity to address the judge on the extension.

57. During his visit, the Special Rapporteur heard allegations that individual Mapuche suspects had been tortured or otherwise ill-treated during those extended periods of detention, in an effort to coerce them into signing a confession. While he was not in a position to investigate the allegations, the Special Rapporteur notes that short periods of police detention are intended to prevent torture and ill-treatment of suspects during interrogation.

58. The Special Rapporteur was also informed that, following police detention, a person charged under the anti-terrorism legislation will typically have to wait six months before his lawyers are served with the evidence and statements in support of the charge,[21] during which time they are seriously hampered in the preparation of a defence. This compares to a period of 28 days that is typical for non-terrorist crime.

59. Since the penalty for terrorist offences is significantly longer than the penalty for the equivalent substantive criminal offence, the likelihood of an order for release on bail pending trial is correspondingly diminished. Moreover, under the Constitution, there is a special provision applicable to terrorist offences under which any appeal against a decision to order detention pending trial requires unanimity of the three judges considering the appeal as a precondition to an order for release. If a majority of the appeal judges favour pretrial release, but one disagrees, the accused will remain in custody. This has led to complaints on behalf of Mapuche activists that many have remained in pretrial detention for very long periods of time. In some cases, those same persons accused have been acquitted of the terrorism charges at trial.

60. During his meetings with the public prosecutors, the Special Rapporteur was presented with the argument that the continuing use of the anti-terrorism legislation as a means of investigating certain Mapuche protest crimes could be justified by reference to the availability of special investigative methods under that legislation, as referred to in paragraph 55 above. On closer analysis, however, the Special Rapporteur found those justifications to be unconvincing.

61. The Special Rapporteur notes that the power to obtain authorization for the use of telephone and other communication intercepts is not confined to charges under the terrorism legislation. The more serious substantive criminal offences (such as arson resulting in death) may also lead to the use of that investigative technique being authorized. For common crimes, the use of intercepts depends upon the gravity of the offence. It must be inferred that the Parliament intended that such methods, which involve intrusion into private communications, would be available only in connection with the investigation of the most serious crimes. However, a comparatively less serious crime (such as arson against property) will attract the use of these more invasive forms of investigation if it is labelled as a terrorist crime. If, therefore, investigations and prosecutions were to concentrate on the substantive criminal act alleged, and to charge that act as a common crime, then the balance

[20] Ibid, art. 11, para. 1.

[21] Ibid, art. 21.

envisaged by the Parliament (which confines intercepts to the most serious offences) would be maintained and respected.

62. The other special evidential measure associated with the anti-terrorism legislation is the use of anonymous witnesses. That has become a source of acute contention in the Mapuche context and one of the main criticisms put forward by a number of national and international bodies. The use of anonymous witnesses places the defence at a considerable disadvantage during a trial since the defence counsel is unable effectively to challenge the credibility of the witness. The 2010 amendments affirmed the right of the accused to direct "questions designed to establish their credibility or qualifications and to clarify the testified facts, as long as the questions do not pose a risk of revealing their identity".[22]

63. The Special Rapporteur was informed that this provision is strictly interpreted to prevent any line of questioning that would expose the vulnerabilities (whether reliability or bias) of the witness, thus hampering the presentation of an effective defence. According to the information available to the Special Rapporteur, there is no provision preventing the court from relying on the testimony of an anonymous witness as the sole or decisive basis for a conviction. Perhaps most seriously, there is no specific obligation for the prosecutor to investigate the credibility of an anonymous witness and to disclose the products of such an investigation to the accused.

64. International human rights law, in particular article 14 of the International Covenant on Civil and Political Rights,[23] protects the right to a fair and adversarial procedure in the trial of all criminal offences. While the use of anonymous witnesses will not automatically violate that right, international law requires that departures from a full and public adversarial procedure should be kept to an absolute minimum; that anonymity should be clearly and specifically justified by the need to protect the physical safety of the witness against reprisals; and that the resulting unfairness to the accused must be counterbalanced by procedural guarantees that ensure that the fairness of the proceedings is not unjustifiably compromised. Such counterbalances may include a rule preventing reliance on anonymous testimony as the sole or decisive basis for a conviction, and a specific enhanced obligation of investigation and disclosure to the defence of any fact tending to undermine the reliability or credibility of the anonymous witness.

65. None of these safeguards appear to be in place under the anti-terrorism legislation in Chile. There have reportedly been cases where the use of anonymous witnesses has been the sole or decisive basis for a conviction; and there is no specific obligation on the prosecutor to investigate and disclose facts undermining the witness's credibility (beyond the usual principle of objectivity). There is thus an obvious risk of procedural unfairness, which carries with it the spectre of miscarriages of justice.

66. The Supreme Court has criticized the inappropriate use of anonymous witnesses in one Mapuche protest case in 2011, noting that the public prosecutor in that case had afforded benefits in exchange for testimony which rendered the witness's evidence worthless. That serious criticism of the use of anonymous witnesses in such cases was reiterated by senior members of the judiciary during discussions with the Special Rapporteur.

67. However, the Special Rapporteur notes that the most compelling argument against the continued use of anonymous witnesses in connection with Mapuche protest cases is that

[22] Counter-Terrorism Act, art. 18, para. 3.

[23] Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial.

it is not in fact justified in those cases by the stated objective of protecting the safety of the witness. The commander of the Carabineros in Araucania and the public prosecutors both in Temuco and Concepción confirmed during meetings with the Special Rapporteur that the anonymity measures used in Mapuche prosecutions under the anti-terrorism legislation are consistently ineffective because the community is invariably able to identify the witness from local knowledge. This is a stark and far-reaching concession. All those concerned with law enforcement in the region agree that, in the absence of a full witness protection scheme (under which a witness and his or her family are provided with a new identity and relocation measures), the present arrangements are ineffective in protecting the witness.

68. It thus follows that the use of anonymous witnesses in the context of prosecutions of Mapuche accused under the anti-terrorism legislation is not achieving the stated objective of providing protection to the witness and his or her family. On the other hand, it is continuing to pose a grave impediment to the fairness of the trials for these offences. It is also presenting the witness and his or her family with the misleading impression that their identity is unknown, when in fact the reverse is usually the case. It thus undermines the rights of the accused without protecting the rights of the witness, and arguably even exposes the witness and his or her family to greater and unnecessary risk by creating the false impression that their identity will remain secret.

C. Excessive use of force by the police

69. Another issue of serious concern to the Special Rapporteur is the use of excessive force by members of the Carabineros and the investigative police forces (Policía de Investigaciones), during raids or searches of Mapuche communities and the apprehension of suspects, together with the almost complete absence of accountability for the crimes of excessive violence committed against the Mapuche during the course of those searches.

70. The issue has been highlighted by a number of international and national bodies, including treaty bodies, special procedures, the Inter-American Commission on Human Rights and the Chilean National Human Rights Institution. Among others, the Special Rapporteur on the rights of indigenous peoples has expressed his concern at allegations of abuse and violence by police officers against members of the Mapuche people, in the context of police searches and other police operations (A/HRC/12/34/Add.6, para. 62). The issue was also recently highlighted by the Committee on the Elimination of Racial Discrimination, which observed that the enforcement of the Counter-Terrorism Act and the undue and excessive use of force against members of the Mapuche people, including children, women and older persons, could have negative and discriminatory impacts on indigenous peoples that go beyond their impacts on the individuals suspected of having committed an offence (CERD/C/CHL/CO/19-21, para. 14; see also CEDAW/C/CHL/CO/5-6, paras. 20 and 21). The Special Rapporteur further notes that violent situations in which the rights of Mapuche children have been violated have been documented by the Inter-American Commission on Human Rights, with the issuance of a public statement condemning the police for its disproportionate use of force.[24]

71. The Special Rapporteur notes that the National Human Rights Institution, often jointly with the Public Defender's Office, has presented a number of calls for constitutional guarantees of fundamental rights. In a series of habeas corpus decisions, superior courts of justice, including the Supreme Court and Temuco's Court of Appeal, have returned

[24] Press release of 2 August 2012.

findings to the effect that excessive force, including the use of firearms, was deployed by members of the Carabineros against unarmed Mapuche civilians.

72. The Special Rapporteur believes that the use of excessive force by the Carabineros during the course of such searches was, until recently, commonplace and even systematic.[25] He has been informed of numerous instances in which wholly disproportionate numbers of armed special forces have entered communities, often accompanied by helicopters and reinforcements, and in which non-lethal firearms have been discharged not only against adult males but against the elderly, women, children and even infants, causing many injuries. He was personally informed by the Chief of the investigative police in Araucanía that such operations would often take place with three times as many officers as Mapuche. He has seen for himself photographs and videos showing the aftermath of those incidents, which demonstrate beyond doubt that multiple gunshot injuries requiring hospitalization have been inflicted in many instances. He has also seen evidence confirming the sheer number of discharged cartridges in some operations which leave no room for doubt as to the extent of the fire power that was employed.

73. The use of excessive physical force, and in particular the unjustified use of firearms, amounts to a criminal offence which should be duly investigated and, if found proved, should be punished to the full extent of the law. Needless to say, the Mapuche communities are equally entitled to protection by criminal law against the use of excessive violence by the police.

74. In that respect, the Special Rapporteur found that the most alarming feature of the situation was the almost complete absence of accountability for the crimes allegedly committed by law enforcement officials. Taking the evidence and judicial findings as a whole, it appears undeniable that some members of the Carabineros have in the past adopted a practice of using excessive and potentially lethal force during intrusions into Mapuche communities.

75. The Special Rapporteur notes that formal responsibility for investigating and prosecuting these crimes rests with the Military Prosecutor.[26] However, despite the fact that many of these incidents have been reported to the Military Prosecutor, there has so far not been a single prosecution for the use of excessive non-fatal force by members of the Carabineros during the conduct of searches of Mapuche communities. Despite repeated requests, the Special Rapporteur was not provided with statistics in that respect. This is bound to reinforce a sense in these communities that the law is being applied in a discriminatory manner and the Special Rapporteur is reluctantly driven to the conclusion that the Office of the Military Prosecutor has conspicuously failed in its duty to enforce the law through the investigation and prosecution of those responsible. In that connection, the Special Rapporteur wishes to emphasize that the jurisdiction of military tribunals should be limited solely to military personnel charged exclusively with military offences.[27]

---

[25] In its "Report on Police Violence Against the Mapuche People 2009–2013" (2013), the Observatorio Ciudadano has documented 70 cases in which both the Carabineros and the investigative police have used excessive force against persons belonging to the Mapuche people.

[26] Act No. 20477 of 30 December 2010 amending the jurisdiction of military tribunals excluded civilians and minors from military jurisdiction. However, the military justice system has maintained its exclusive jurisdiction as regards crimes committed by the Carabineros in accordance with article 5, paragraphs 1 and 3, of the Military Code.

[27] The Special Rapporteur notes with interest that two bills are currently being considered by the National Congress, designed to limit the jurisdiction and competence of the military courts in accordance with international standards and thus making it possible for the civilian justice system to

76. The Special Rapporteur visited the community of Juan Catrilaf II, which special forces of the Carabineros entered in October 2009 in pursuit of a single unarmed individual. Despite the fact that the resistance met from other members of the community was unarmed, the special forces discharged numerous firearms into the community that injured 19 people, including three women and a nine-month-old baby, who were struck with plastic bullets. Many of the victims were hospitalized; independent records of their injuries and treatment are available for investigation.[28]

77. Despite the gravity of that incident, the Special Rapporteur was disturbed to discover that neither the Commander of the Carabineros in Araucanía nor the Temuco Public Prosecutor seemed aware of it, and neither appeared to consider that it was part of their responsibility to make themselves aware of it. The Special Rapporteur considers that this amounts to a serious institutional failure and points to two possible conclusions. Either the incident, grave though it was, was so commonplace in the region that it did not merit being brought to the attention of the head of the Carabineros and the public prosecutor, notwithstanding the fact that the individual whose arrest was being pursued remains to this day the subject of ongoing criminal proceedings; or there has been a serious and systematic failure of institutional communication and responsibility. For the avoidance of doubt, the Special Rapporteur considers that the public prosecutor is under a duty in every case to fully inform himself of the circumstances surrounding any search or arrest leading to criminal proceedings for which he is responsible.

78. However, the Special Rapporteur notes with concern that the only cases in which criminal proceedings have so far been brought against members of the Carabineros relate to three fatal shooting incidents in which Mapuche activists lost their lives, notably Alex Lemun Saavedra, Matías Catrileo Quezada and Jaime Mendoza Collío. The most recent of those cases is still proceeding through the courts, and it would not be appropriate for the Special Rapporteur to comment on a case while it remains under judicial consideration. However, in one of the other two instances, the Carabinero involved was found guilty of the use of excessive force resulting in the death of Matías Catrileo Quezada. His conviction was upheld by the Military Court but the sentence was reduced from five years' immediate imprisonment to three years' deferred imprisonment, in a ruling subsequently affirmed by the Supreme Court. The Special Rapporteur was disturbed to discover that the officer remained as a serving member of the Carabineros throughout the proceedings, and even after the final confirmation of his conviction by the Supreme Court. He was only dismissed some time later as the result of administrative intervention.

79. In his preliminary end-of-visit statement,[29] the Special Rapporteur welcomed a number of recent initiatives by the central Carabineros to bring about a significant change in the relationship between their officers and the Mapuche communities, including a review of their practices and procedures to ensure that they are in line with international human rights law. Such initiatives include the establishment of a specialized unit known as the Human Rights Department within the Carabineros, the mandate given to senior officers from Santiago to investigate the causes of the apparent breakdown in the relationship between the Carabineros and Mapuche, and a number of human rights training programmes

---

investigate and punish any abuses or crimes committed by members of the police (CERD/C/CHL/19-21, para. 112).

[28] Other incidents brought to the attention of the Special Rapporteur include the firing of pellets by the police at children and adolescents during the eviction of Collipulli Hospital in July 2012.

[29] Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13598&LangID=E.

and processes aimed at reducing conflict and building trust, in particular the comprehensive pilot strategy of patrols dedicated to ethnic communities (PACE).

D. Conditions of detention

80. The Special Rapporteur conducted visits to three detention facilities, notably the Temuco City prison, the Angol prison and the El Manzano prison in Concepción, which all house detainees from Mapuche communities, both those convicted and those still awaiting trial for offences connected with the Mapuche protests in the region of Araucanía. He had the opportunity to discuss the challenges faced by staff and inmates and met privately with a number of Mapuche detainees. The Special Rapporteur is extremely grateful to the Prison Service for the constructive and helpful way in which they facilitated his visits to those institutions.

81. The Ministry of Justice informed the Special Rapporteur that special regimes are in place in all custodial institutions that house prisoners associated with the Mapuche conflict, and that their cultural rights and social customs are accommodated to the greatest extent possible, consistent with the maintenance of good order and discipline within the institutions. The Special Rapporteur was able to meet with all the prisoners in those institutions who were detained in connection with the land protests and to see their conditions of detention. He found that adaptations had been made at each institution in an effort to accommodate the special needs of that category of prisoner. He had lengthy discussions with a number of inmates, including Celestino Córdova Tránsito who at the time was facing trial in connection with the incident that led to the death of the Luchsinger-Mackay couple,[30] and with the community leader Hector Llaitul Carrillanca.

82. The Special Rapporteur is of the view that one aspect that needs to be urgently addressed by the Ministry of Justice is the provision of facilities for Mapuche detainees to serve their sentences close to the communities from which they come. At the time of the Special Rapporteur's visit, most of those who are awaiting trial were housed in Angol prison, where access for their families and communities is relatively easy. However four convicted prisoners were housed in Concepción, where such access is much more difficult. If those who are sentenced to imprisonment are to be able to reintegrate peacefully into their communities after they are released, then they need to be able to maintain relationships during their incarceration. Moreover, any sustainable long-term resolution needs to be capable of bringing all parties into the dialogue, including those who have been at the forefront of the Mapuche protests.

IV. Conclusions and recommendations

A. Conclusions

83. **The Special Rapporteur appreciates the cooperation extended by the Government of Chile. He notes that Chile has repeatedly made commitments to uphold human rights in the context of counter-terrorism, including by ratifying many international instruments related to human rights and terrorism (see para. 30 above).**

[30] The Special Rapporteur notes that Celestino Córdova Tránsito was sentenced to 18 years' imprisonment on 28 February 2014 for arson and murder and that the Court did not find evidence that a terrorist crime had been committed.

The Special Rapporteur regards these commitments, together with the invitation extended to him and the subsequent dialogue, as significant steps on the way to fulfilling international human rights obligations.

84. The Special Rapporteur takes note of the progress made by the State of Chile towards recognition of the rights of indigenous peoples in the country, including the ratification of ILO Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries, and the constitutional reform initiatives relating to indigenous matters. He also takes note of the development of plans and proposals in response to the recommendations of the former and present Special Rapporteurs on the rights of indigenous peoples, especially in the area of assistance policies.

85. The Special Rapporteur is of the view that, despite the positive aspects introduced by Act No. 20,467 to the Counter-Terrorism Act (No. 18,314), parts of that legislation are still not in compliance with international human rights norms and a number of inconsistencies exist between the law and the guarantee of respect for the principle of legality and the right to due process. The Special Rapporteur believes that the use of anti-terrorism legislation against Mapuche land protestors is part of the problem, and not part of the solution. It has become counterproductive to a peaceful resolution of the Mapuche question and should cease.

86. With regard to the numerous allegations concerning excessive use of force by the Carabineros and the investigative police in the context of searches or raids in Mapuche communities, the Special Rapporteur stresses that continuing impunity is not an option. A comprehensive and integrated national strategy for addressing the Mapuche question must include the adoption of adequate measures and machinery for investigating and prosecuting past crimes committed against the Mapuche communities. Accountability for those past violations is an essential part of any strategy for rebuilding trust and improving community relations.

87. The Special Rapporteur concludes that the situation in the Araucanía and Biobío regions is extremely volatile. The frequency and gravity of the violent confrontations in the region has been intensifying over the past three years. In the absence of prompt and effective action at the national level, it could very quickly escalate into widespread disorder and violence. There is an urgent need to give the matter the priority it demands.

B. Recommendations

88. In a spirit of cooperation, the Special Rapporteur wishes to make the following recommendations to the Government of Chile.

89. The Special Rapporteur urges the Government of Chile to adopt a national strategy aimed at comprehensively addressing the Mapuche question within a defined and relatively short time frame. Such a strategy should include the Constitutional recognition of the right of the Mapuche to exist as an indigenous people within the State of Chile, together with the creation by the incoming Government of an adequately staffed and funded ministry for indigenous affairs.

90. The Special Rapporteur recommends that the responsibility for devising and implementing the national strategy be devolved to a partnership between Government and a newly established national consultative commission. The commission should include representatives of the major political parties, the relevant interest groups (the Mapuche, small and larger rural landowners, commercial interests and the victims of rural violence), and the National Institute of Human Rights. Mapuche representation on the Commission must reflect the widest possible spectrum of Mapuche community

interests. Specialist international and regional expertise may assist the Commission to build a consensus on the key challenges and their possible solutions.

91. The Special Rapporteur recommends that this Commission be mandated to develop recommendations for implementation by the public authorities in the following areas: consultation and cooperation, the rights to land and territory, development of natural resources and policies on conflicts connected with claims to Mapuche lands, including the application of the Counter-Terrorism Act.

92. As part of such an integrated national strategy, the Special Rapporteur urges the Government of Chile to prioritize and accelerate the process of land repatriation or restitution, including by allocating the necessary budgetary resources in order to achieve current repatriation targets within a short and defined timescale.

93. The Special Rapporteur recommends that all provisions establishing terrorist crimes in the Counter-Terrorism Act adhere strictly to the principle of legality. Any criminalization of terrorist activity must be formulated in explicit and precise terms that enable the individual to regulate his or her behaviour. In particular, the definitions of terrorist crimes should be confined exclusively to activities that entail or are directly related to the use of deadly or serious violence against civilians.

94. The Special Rapporteur also urges the State of Chile to ensure that no further arrests of Mapuche land protestors should take place in reliance on the anti-terrorism legislation; no further charges of Mapuche land protestors should be brought under the anti-terrorism legislation; that the existing charges pending against Mapuche land protestors who currently face prosecution under the anti-terrorism legislation should be reviewed, and prosecutions for common criminal law offences be substituted; and that a mechanism should be introduced enabling a review of the convictions and sentences imposed on past Mapuche land protestors under the anti-terrorism legislation to bring their situation into line with the change of policy recommended by the Special Rapporteur. Those who have been convicted in trials relying on the testimony of anonymous witnesses should be given the right to have their convictions reviewed and, where appropriate, a retrial ordered, which would take place under the provisions of ordinary criminal law, without recourse to anonymous testimony.

95. The Special Rapporteur urges the competent authorities to investigate complaints of abuse and violence against indigenous peoples committed by police officers, to prosecute and punish those responsible for such acts and to provide compensation to the victims or their family members. Furthermore, the Special Rapporteur calls upon the competent authorities to take the necessary measures to prevent such acts.

96. In that respect, the Special Rapporteur recommends that the jurisdiction of military tribunals be limited solely to military personnel charged exclusively with military offences. He urges the Government of Chile to create a new civilian investigation body with the function of inquiring into crimes of excessive use of force and violence committed against Mapuche communities by members of the Carabineros and the investigative police. Such a body should be institutionally independent of both forces, should have the power to investigate and to require the initiation and prosecution of criminal and disciplinary proceedings. It should also have power to inquire into the failure of the Office of the Military Prosecutor to secure accountability in the many cases of excessive violence for which it has so far failed to take any effective action.

97. **The Special Rapporteur further recommends that the Government of Chile, through the Ministry of Justice, ensure the provision of facilities for Mapuche detainees to serve their sentences close to their communities. The Special Rapporteur is of the view that this would facilitate their peaceful reintegration into their communities after they are released.**